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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT GRIFFIN,

Defendant and Appellant.

C043903

(Super. Ct. No.
00F08186)

Sheriff's deputies arrested defendant Scott Griffin on October 2, 2000, following a 26 mile high-speed chase. A jury convicted him of evading a peace officer with wanton disregard for the safety of persons and property (Veh. Code, § 2800.2, subd. (a) -- count one) and refusing to stop at the scene of an accident resulting in injury (Veh. Code, § 20001, subd. (a) --

count eight).¹ Defendant admitted two prior serious felony convictions within the meaning of Penal Code sections 667, subdivisions (a) and (b)-(i), and 1170.12. The trial court sentenced him to 25 years to life on count one and 25 years to life on count eight, but stayed the sentence on count eight under Penal Code section 654.

On appeal, defendant argues the trial court denied him the right to present a defense by excluding evidence showing he fled from the officers out of fear of being shot, and by denying his request for a jury instruction on necessity. We conclude defendant failed to establish the necessary evidentiary foundation for a necessity defense. Accordingly, we shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Sacramento County Sheriff's Deputy Andrew Buchanan informed dispatch that he planned to stop a Chevrolet sedan traveling on Interstate 80 near Greenback Lane after he learned that the car's registration was expired. At trial, Buchanan identified defendant as the driver.

¹ The court granted a defense motion to acquit defendant of count six, removing or attempting to remove a firearm from a peace officer engaged in the performance of his lawful duty. (Pen. Code, §§ 148, subd. (d), 1118.1.) Later, the jury acquitted defendant of four counts of assault of a peace officer with a deadly weapon (Pen. Code, § 245, subd. (c) -- counts two, three, four & five) and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a) -- count seven).

Deputy Buchanan activated his overhead lights as he prepared to make the vehicle stop. The Chevrolet appeared to be pulling over to the emergency lane on the right side of the freeway, but reentered the traffic lane and exited the freeway at Madison Avenue. Buchanan and a California Highway Patrol (CHP) unit followed the Chevrolet off the freeway. The CHP unit pulled out of the chase when other sheriff's units joined the pursuit.

Defendant traversed a 26-mile route through residential areas at speeds of up to 80 to 85 miles per hour, followed initially by three sheriff's patrol cars. He ran approximately 53 stop signs and 12 red stoplights in the course of the chase. The sheriff's deputies deployed a "tack strip," which deflated one rear tire, but defendant continued to flee. Defendant turned into a dead-end street and struck two patrol cars in his effort to escape. One of the deputies was injured when the Chevrolet collided with his patrol car. The chase ended when Deputy Chris Rogers intentionally drove his patrol car into the rear of the Chevrolet, causing it to spin sideways. The deputies arrested defendant and his passenger, Christine Ramirez.

Deputy Buchanan testified that no one shot at defendant's car in the course of the pursuit. Sheriff's Sergeant Romahn Pietrek, the patrol supervisor who monitored the incident from the time Buchanan reported he planned to stop the Chevrolet, also testified that no gunshots were fired.

Christine Ramirez, defendant's girlfriend and passenger in the Chevrolet during the chase, testified she heard what sounded "like shots fired or something" when they first left the freeway at Madison. Having heard gunshots in the past, she said the noise she heard -- "Pop, pop, pop, like three times" -- sounded like three gunshots. Ramirez told defendant "to go because [she] was scared." She admitted on cross-examination that she never told law enforcement officers about hearing the gunshots at the time of the incident.

Defendant testified in his own behalf. He stated he saw the patrol car just before he left Interstate 80 at Madison. When he applied his brakes to pull over, he did not come to a complete stop. At the same time, defendant "heard a shot," which he described as "[o]ne boom." Defendant testified that although he was on parole at the time with a warrant out for his arrest, he was not "going to run" until he heard the gunshot. He said he ran stop signs and stoplights because he "was scared of being shot," frightened for his life, and "thought [the deputies] were trying to kill [him]."

DISCUSSION

I

The Necessity Defense

A. Introduction

Defendant argues the trial court abused its discretion and denied his Sixth and Fourteenth Amendment rights to present a defense by excluding testimony that formed the basis of his defense of necessity. He correctly observes that under both

state and federal Constitutions, a criminal defendant has a right to present a defense, including his version of the facts and witnesses who will testify on his behalf. (*Washington v. Texas* (1967) 388 U.S. 14, 19 [18 L.Ed.2d 1019, 1023]; *People v. Jones* (1990) 51 Cal.3d 294, 317; *In re Martin* (1987) 44 Cal.3d 1, 30.) In light of this constitutional standard, the trial court may not apply evidentiary rules mechanistically to deprive a defendant of the opportunity to present legitimate exculpatory evidence. (*Crane v. Kentucky* (1986) 476 U.S. 683, 690-691 [90 L.Ed.2d 636, 645-646] (*Crane*); *Chambers v. Mississippi* (1973) 410 U.S. 284, 302-303 [35 L.Ed.2d 297, 312-313].)

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, *Chambers v. Mississippi*, supra, [410 U.S. 284], or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, [citations], the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' [Citations.] We break no new ground in observing that an essential component of procedural fairness is an opportunity to be heard. [Citations.] . . . In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.' [Citations.]" (*Crane*, supra, 476 U.S. at pp. 690-691.)

To prevail on the defense of necessity, a defendant must show that he or she violated the law "(1) to prevent a significant evil, (2) with no adequate alternative, (3) without

creating a greater danger than the one avoided, (4) with a good faith belief in the necessity, (5) with such belief being objectively reasonable, and (6) under circumstances in which he did not substantially contribute to the emergency.” (*People v. Pepper* (1996) 41 Cal.App.4th 1029, 1035 (*Pepper*).) “The necessity defense is very limited and depends on the lack of a legal alternative to committing the crime. It excuses criminal conduct if it is justified by a need to avoid an imminent peril and there is no time to resort to the legal authorities or such resort would be futile.” (*People v. Beach* (1987) 194 Cal.App.3d 955, 971.) “[A]lthough the exact confines of the necessity defense remain clouded, a well-established central element involves the emergency nature of the situation, i.e., the imminence of the greater harm which the illegal act seeks to prevent. [Citation.] The commission of a crime cannot be countenanced where there exists the possibility of some alternate means to alleviate the threatened greater harm. [Citation.]” (*People v. Patrick* (1981) 126 Cal.App.3d 952, 960 (*Patrick*).)

As we explain, defendant failed in his offers of proof to establish the required elements of the necessity defense. Thus, the trial court did not abuse its discretion or violate defendant’s constitutional rights in excluding the evidence he sought to introduce.

B. Defendant’s Offers of Proof

Defense counsel moved in limine to admit evidence of two earlier incidents he claimed were relevant to defendant’s “mind-

set at the time . . . his reasons for running." Richard Carl was prepared to testify about the first incident, which occurred at a trailer park in Elverta approximately two weeks before the chase. Counsel represented that "specifically, [defendant] was walking up. He was going to knock on Mr. Carl's door. Mr. Carl opened the door. Somebody came up from behind and actually was shooting at Mr. Carl, and ended up shooting [defendant] in the arm. I mean, he has the scars that show it." Defense counsel also explained that the person who shot defendant, "a guy named Augie," was subsequently shot and killed by a police officer. Defendant's mother was prepared to testify about the second incident, which occurred a week before the chase. She told counsel that two uniformed Sacramento County Sheriff's deputies "showed up and said they were going to take [defendant] down like Bonnie and Clyde."

The trial court denied defendant's motion to admit Carl's testimony, stating: "First of all, the facts aren't the same, the circumstances aren't the same, law enforcement isn't involved. One is being shot in a trailer park or near a trailer by a person who is subsequently shot and killed by police himself for whatever reason -- I'm not going there. [¶] This is a pursuit on a highway in a public place by law enforcement. There's not even any evidence of shots being fired other than a statement by a witness or perhaps by your client that they presume or assume. There's no evidence that shots were fired. There's evidence that shots weren't fired, certainly strong and compelling that shots weren't fired. [¶] Under [Evidence Code

section] 352,^[2] if any, it's very minimal probative value on that issue of mental state, and I'm satisfied that it would necessitate undue consumption of time. It would also confuse the issues and mislead the jury, somehow tying in a shooting of your client by some third party not related to law enforcement with an alleged shooting arguendo by police officers. It will not come in."

The trial court "tabl[ed]" its ruling on the admission of the testimony from defendant's mother about the second incident, indicating defense counsel could bring it up later. The court noted it was "not inclined" to admit the testimony.

Defense counsel raised the issue of the prior incidents again during defendant's testimony. After he testified he had been shot before, defense counsel asked, "How many times?" The trial court sustained the prosecution's relevance objection and continued the discussion outside the presence of the jury. Counsel repeated his offers of proof. The court again excluded Carl's testimony on the first incident under Evidence Code section 352 and for lack of relevance, stating, "I am satisfied that there has to be more similarity to being shot to justify this state of mind in order to invoke the necessity doctrine." As to the proffered testimony of defendant's mother on the

² Evidence Code section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

second incident, the court found “minimal, if any, probative value,” which was “simply substantially outweighed by confusing the issues or misleading the jury and undue consumption of time.” Later in the trial, defense counsel reiterated that Carl and defendant’s mother were prepared to testify. The trial court acknowledged defense counsel had made his record.

C. Discussion

Our review of defendant’s challenge to the court’s evidentiary ruling involves a two-step analysis. The first question is whether the trial court erred in ruling that defendant failed to establish the necessity defense as a matter of law. “The standard for evaluating the sufficiency of the evidentiary foundation is whether a reasonable jury, accepting all the evidence as true, could find the defendant’s actions justified by necessity. [Citation.] [S]atisfying the required foundational burden through an offer of proof rather than on the witness stand makes no difference to the standard of review on appeal, which is ‘whether there is evidence deserving of consideration from which reasonable jurors could conclude the . . . elements [of the necessity defense] have been satisfied.’ [Citation.]” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1539 (*Trippet*).) If defendant fails to establish those elements, the trial court is justified in excluding the evidence and not allowing the jury to consider the issue of necessity. (*Patrick, supra*, 126 Cal.App.3d at pp. 960-962.)

If we conclude the proffered evidence is relevant under the foregoing standard, the next question is whether the court

abused its discretion in excluding it under Evidence Code section 352. "A trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice [citation]." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

On the foundational question, defendant argues the proffered testimony was relevant to the fourth and fifth elements of the necessity defense, that is, his good faith belief in the necessity and whether that belief was objectively reasonable. He contends application of the objective test -- whether defendant was reasonable in believing his actions were necessary -- requires an understanding of all the relevant circumstances. These circumstances include what he "saw and heard before the incident regarding future police conduct," specifically, the knowledge "that law enforcement had shot and killed his friend and that they planned to kill him." Defendant disputes that the circumstances of the prior shooting incident had to be similar to those involved in the police chase.

We begin by concluding that the trial court did not err in excluding Carl's testimony about the incident in which defendant was shot at the Elverta trailer park by an assailant later killed by police. The connection between those shootings and defendant's claimed fear of law enforcement was tenuous at best. The trial court's mention of lack of similarity between the

shooting at the trailer park and the 26-mile chase was simply another way of saying the earlier incident was irrelevant to defendant's response to the deputies' attempt to effect a vehicle stop on October 2, 2000. No reasonable jury could have found defendant's actions justified by fear allegedly engendered by the events Carl was prepared to describe. (*Trippet, supra*, 56 Cal.App.4th at p. 1539.)

The proffered testimony of defendant's mother -- that uniformed officers told her they would "take [defendant] down like Bonnie and Clyde" -- poses a closer question. This evidence involved two elements of the necessity defense, that is, whether defendant had a good faith belief in the necessity to evade the deputies and whether that belief was objectively reasonable. (*Pepper, supra*, 41 Cal.App.4th at p. 1035.) In other words, the testimony of defendant's mother tended to show he had a legitimate fear of law enforcement. However, defendant failed to establish the other required elements of a necessity defense. First, defendant did not show he had no adequate alternative to his 26-mile-long attempt to escape from the deputies. Indeed, reasonable jurors could conclude that defendant could have stopped his vehicle safely on Interstate 80 where passing drivers would have witnessed the encounter between defendant and Deputy Buchanan. (*Trippet, supra*, 56 Cal.App.4th at p. 1539).) Accepting as true defendant's testimony that he heard a gunshot as he left the freeway, reasonable jurors could conclude that defendant could have found another public place to stop his car before precipitating the high-speed chase. (*Ibid.*)

Second, a reasonable jury could conclude defendant created "a greater danger than the one avoided" (*Pepper, supra*, 41 Cal.App.4th at p. 1035) by driving at high speed through red lights and stop signs in residential areas of Sacramento County (*Trippet, supra*, 56 Cal.App.4th at p. 1539). "As a matter of public policy, self-help by lawbreaking and violence cannot be countenanced where the alleged danger is merely speculative and the lawbreaker has made no attempt to enlist law enforcement on his side." (*People v. Miceli* (2002) 104 Cal.App.4th 256, 268.) "Violence justified in the name of preempting some future, necessarily speculative threat to life is the greater, not the lesser evil" (*People v. McKinney* (1986) 187 Cal.App.3d 583, 587.)

Having concluded defendant failed as a matter of law to establish the elements of the defense of necessity, and his evidence therefore lacked probative value, we also conclude the trial court did not abuse its discretion in excluding it pursuant to Evidence Code section 352.

II

Jury Instructions On Necessity Defense

Defense counsel asked the trial court to instruct the jury on the defense of necessity as set forth in CALJIC No. 4.43 (1998 Rev.). That instruction reads:

"A person is not guilty of a crime when [he] [she] engages in an act, otherwise criminal, through necessity. The defendant has the burden of proving by a preponderance of the evidence all

of the facts necessary to establish the elements of this defense, namely:

"1. The act charged as criminal was done to prevent a significant and imminent evil, namely, [a threat of bodily harm to oneself or another person] [or] [_____];

"2. There was no reasonable legal alternative to the commission of the act;

"3. The reasonably foreseeable harm likely to be caused by the act was not disproportionate to the harm avoided;

"4. The defendant entertained a good-faith belief that [his] [her] act was necessary to prevent the greater harm;

"5. That belief was objectively reasonable under all the circumstances; and

"6. The defendant did not substantially contribute to the creation of the emergency."

Citing *People v. Slack* (1989) 210 Cal.App.3d 937 (*Slack*) and *People v. Kearns* (1997) 55 Cal.App.4th 1128, the trial court found there was "no evidence . . . that the defense of necessity [was] appropriate." It refused to give the instruction.

"[T]he standard of review on appeal as to the correctness of the trial court's decision [rejecting the instruction on necessity] . . . is whether there is evidence deserving of consideration from which reasonable jurors could conclude the . . . elements have been satisfied." (*Slack, supra*, 210 Cal.App.3d at p. 942, citing *People v. Wickersham* (1982) 32 Cal.3d 307, 324; *People v. Wickersham* overruled on another ground in *People v. Barton* (1995) 12 Cal.4th 186, 200-201.) We

have already concluded that defendant failed to establish an evidentiary foundation for a necessity defense. Thus, there was no basis for giving the requested instruction.

DISPOSITION

The judgment is affirmed.

RAYE, J.

We concur:

SIMS, Acting P.J.

BUTZ, J.